

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7640 OF 2005

Mr.Kavi Mahajan S/o K.C.Mahajan ..Petitioner

Vs.

1. Mrs.Rumina Rai W/o Kavi Mahajan
and Anr. ..Respondents

Mr.S.K.Sthalekar for the petitioner

CORAM : S.U.KAMDAR, J
DATED : 21ST NOVEMBER, 2005

P.C.:

1. The present petition challenges the impugned order dt.28.6.05 at Ex.7 passed in Matrimonial Petition no. A-1465-04 The contention of the petitioner in the present case is that the petitioner is governed by the provisions of Jammu & Kashmir Hindu Marriage Act and accordingly the petition ought to have been filed under the provisions of Jammu & Kashmir Hindu Marriage Act at Jammu & Kashmir. Petitioner placed reliance on the Judgment of the Jammu and Kashmir High court reported in the case of K.Radha Krishnan Nayyar V.Smt.Radha reported in AIR 1992 Jammu and Kashmir 1 and contends that since the petitioner is a

domicile of Jammu and Kashmir, the only court which has Jurisdiction is Jammu and Kashmir and the petition ought to be filed only under the provisions of Jammu and Kashmir, Hindu Marriage Act and not under the Central statute of Hindu Marriage Act. It is an admitted position that the petitioner is holding the Domicile certificate which is 16 years back. It is also an admitted position that the petitioner has since settled outside the state of Jammu & Kashmir and is at present at Ahmedabad. Both the petitioner and respondents are not the residents of Jammu & Kashmir any longer and have settled out of the state of Jammu & Kashmir The Judgment of the Jammu & Kashmir High Court interalia provides that where the parties have settled outside the State and where the Central Statute is applicable then in that event the Central act applies and not the State. The relevant portion of the aforesaid Judgment reads as under:

"The persons who were governed by the State Act at the time of marriage and whose marriage was solemnised within the State of

Jammu and Kashmir, can get a relief only in the State and not in any other court in the country under the Central Act unless both the parties have settled and have become domicile of a place to which the State Act is not applicable but the Central Act applies."

2. Apart therefrom under the provisions of S.21 (4) of the Jammu & Kashmir Marriage Act. it is provided that the Jurisdiction has to be looked into as on the date of presentation of the petition and the petition can be presented where the petitioner is residing, in a case where the respondent is residing at that time, outside the territories of Jammu & Kashmir. In that view of the matter, I find no substance in the matter. Petition accordingly fails. The same is dismissed accordingly. No order as to costs.